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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

No. 75-169

OMAHA TRIBE OF INDIANS, et al.,
Petitioners,

vs.

WILLIAM A. PETERS, *et al.*,
Respondents.

BRIEF AMICUS CURIAE OF THE NATIONAL CONGRESS OF AMERICAN INDIANS, INC. IN SUPPORT OF THE PETITION FOR CERTIORARI

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This brief is filed with the consent of both parties.

The National Congress of American Indians, Inc. (NCAI), is a nonprofit association of most of the Indian tribes of this country. Its purpose is to promote the interests of American Indians. It was incorporated in Oklahoma in 1954, and its national headquarters is at 1430 K Street, N.W., Washington, D.C. The decision below, if allowed to stand, will seriously affect many of NCAI's members.

The decision below holds that Public Law 280, 28 U.S.C. § 1360, empowers states to tax reservation Indians without their consent. This is a holding of fundamental impact on many tribes in 13 states, and a major infringe-

ment of tribal freedom from state interference. We urge this Court to grant certiorari.

Pursuant to Public Law 280, some 13 states presently have full or partial jurisdiction over some or all Indian reservations in those states: [1]

Alaska	Idaho	Nevada
Arizona	Iowa	Oregon
California	Minnesota	Washington
Florida	Montana	Wisconsin
	Nebraska	

Public Law 280 by any fair reading *on its face* applies only to criminal law, not relevant here, and *private civil law*—divorce, contract, and the like. Nowhere does it grant the state the sovereign powers, such as the power to tax Indians, that the state claims here.

Public Law 280's preamble (67 Stat. 588) says that it is—

> "an Act to confer jurisdiction on [certain states] with respect to criminal offenses and *civil causes of action* committed or arising on Indian reservations . . . ." (Emphasis added)

By no fair reading can this language be stretched to grant to the states the power to tax Indians.

Public Law 280 covers civil jurisdiction in Sec. 4 (28 U.S.C. § 1360(a)) the operative language of which is:

> "[Certain states] shall have jurisdiction over *civil causes of action between Indians or to which Indians are parties* . . . ." (Emphasis added)

This is certainly no basis for state taxing power.

Sec. 4 (28 U.S.C. § 1360(a)) goes on to say:

[1] In addition, Iowa, Kansas and New York exercise some jurisdiction by special statutes not relevant here. See tabulation at 78 I.D. 24 (1972).

> ". . . those civil laws of such State that are of general application to *private* persons or *private* property shall have the same force and effect within such Indian country as they have elsewhere within the State: . . ." (Emphasis added)

If this last clause stood alone, without the two preceding quoted clauses, it could be argued, at least (though we would still find it strained), that "civil laws of general application to private persons and private property" does include laws declaring or implementing state sovereign powers, such as tax laws. But the two preceding quoted clauses make it clear that Congress was thinking of the more limited (and in the context more natural) concept of the laws governing private relationships. To say that Congress intended this language to grant major sovereign powers to the state, such as the *taxing* power, is simply impermissible, in view of the preceding quoted clauses, and should be rejected out of hand.

If the holding of the court below is allowed to stand, it may confidently be predicted that many Public Law 280 states will take the position that they have full sovereignty over Indian reservations, except over federal trust property, and will claim the right to zone reservation land; to license tribal businesses; to grant franchises on the reservation; to tell the tribes what air and water standards to adhere to, and so forth.

If the holding below is not reviewed, tribes which are striving to build modern, self-governing communities will face serious delays, litigation costs, and uncertainties in knowing what tribal powers survive Public Law 280, and to what extent the tribes must defer to state sovereignty. It is inevitable that this great issue will interfere with tribal progress until this Court settles it. The sooner the Court settles it the sooner the tribes and the Public Law 280 states will know what the future shape of their relationship will be.

Wherefore, certiorari should be granted.

Respectfully submitted,

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August 1, 1975